

January 6, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION

SUBJECT: Department of Development and Environmental Services File No. **L08TY401**
Proposed Ordinance No. **2008-0390**

HILLER
Rezone Application

Location: 23612 Military Road S

Appellant: **Kirk Hiller**
Kent West LLC
232 T Street
Auburn, Washington 98002
Telephone: (206) 795-4000

King County: Department of Development and Environmental Services (DDES)
represented by **Mark Mitchell**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7119
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Deny

EXAMINER PROCEEDINGS:

Hearing Opened:	October 23, 2008
Hearing Reopened:	December 16, 2008
Hearing Closed:	December 16, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES AND TOPICS ADDRESSED:

Required findings for zone reclassification.

SUMMARY:

A zone reclassification of 2.27 acres in the urban area, from I-P (use restricted to long-term recreational vehicle storage) to I, is denied.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

A request for a zone reclassification from I, Industrial with a P-suffix condition to I, Industrial (removing the P-suffix condition limiting the uses allowed on the subject property to open/outside storage). The applicant has not proposed a specific use for the site through this application.

Location: 23612 Military Road S, (postal city Kent)

Proponent: Kirk Hiller
Kent West LLC
33313 First Way
Federal Way, Washington 98003
(206) 795-4000

File Number: Rezone L08TY401

Threshold Determination: Determination of Non-significance
Date of Issuance: July 18, 2008
King County Action: Zone Reclassification

Requested Zone: I, Industrial
Existing Zone: I, Industrial (with P-suffix condition limiting use of the property)
Community Plan: Green River Valley
Section/Township/Range: SW 15-22-04 Parcel No.: 1522049053

2. Except as modified herein, the facts set forth in sections B through I in the King County Land Use Services Division's (LUSD) preliminary report to the King County Hearing Examiner for the October 23, 2008, public hearing are found to be correct and are incorporated herein by this reference. The LUSD staff recommends approval of the application, subject to conditions that restrict specified groups of uses.
3. The applicant objects to the restriction of any groups of uses from the proposed I (Industrial) classification, and contends that a "case by case" decision should be made with respect to any specific proposed use. A prohibition upon possible uses that may be proposed in the I zone, without knowing the specific use and its impacts, would be speculative.

4. The subject property was rezoned from BN (Neighborhood Business) to I-P in 2001, in response to an application by the property owner to authorize the specific use now permitted and existing on the subject property.
5. King County Code Section 20.24.190 requires that a recommendation by the hearing examiner to reclassify property include “additional findings that support the conclusion that at least one of the following circumstances applies:
 - A. The property is potentially zoned for the reclassification being requested and conditions have been met that indicate the reclassification is appropriate;
 - B. (Not applicable);
 - C. (Not applicable);
 - D. The applicant has demonstrated with substantial evidence that:
 1. Since the last previous area zoning...authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the subarea plan or area zoning;
 2. The impacts from the changed conditions or circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity such that area rezoning or re-designation is not appropriate...;
 3. (Not applicable);
 4. (Not applicable); and
 5. The requested reclassification or re-designation is in the public interest.”
6. The subject property was not potentially zoned by the King County Council for reclassification to I without any P suffix limitation.
7. There is no substantial evidence that since the last area zoning by the King County Council, authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the subarea plan or area zoning.

CONCLUSIONS:

1. The proposed reclassification from I-P to I would be contrary to the requirement for additional examiner findings set forth in KCC 20.24.190.
2. The proposed reclassification should be denied.

RECOMMENDATION:

DENY reclassification of the subject property from I-P (limiting use of the property) to I.

ORDERED this 6th day of January, 2009.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before January 20, 2009***. If a notice of appeal is filed, the original and six copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before January 27, 2009***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the council.

MINUTES OF THE OCTOBER 23, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08TY401.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Mark Mitchell, representing the Department; Sands McKinley and Kirk Hiller, the Applicants.

The following exhibits were offered and entered into the record:

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| Exhibit No. 1 | Land Use Permit Application received March 5, 2008 |
| Exhibit No. 2 | Rezone Application received March 5, 2008 |
| Exhibit No. 3 | Supplemental application materials received March 5, 2008 |
| Exhibit No. 4 | Department of Development and Environmental Services (DDES) Preliminary Report, dated October 23, 2008 |
| Exhibit No. 5 | Supplement to DDES Preliminary Report |
| Exhibit No. 6 | Notice of Rescheduled Hearing issued August 22, 2008 |
| Exhibit No. 7 | State Environmental Policy Act (SEPA) Determination of Non-Significance issued July 18, 2008 |
| Exhibit No. 8 | Notice of Decision and SEPA Threshold Determination Recommendation and Hearing issued July 18, 2008 |
| Exhibit No. 9 | Affidavit of Publication in the Seattle Times for a September 4, 2008 hearing date |

Exhibit No. 10	Affidavit of Publication in the Kent Journal for a September 4, 2008 hearing date
Exhibit No. 11	Assessors map SW 15-22-04 received march 5, 2008
Exhibit No. 12	King County Certificate of Sewer Availability dated February 2, 2008
Exhibit No. 13	Fire District Receipt dated March 4, 2008
Exhibit No. 14	King County Certificate of Water Availability received March 5, 2008
Exhibit No. 15	Notice of Application issued April 21, 2008
Exhibit No. 16	October 2, 2008 e-mail from Kirk Hiller to Mark Mitchell regarding removal of P suffix
Exhibit No. 17	October 6, 2008 e-mail from Kirk Hiller to Mark Mitchell regarding zone reclassification L08TY401
Exhibit No. 18a-b	Copies of aerial photographs of subject property
Exhibit No. 19	Copy of regional map

Additional exhibit entered into the record on December 16, 2008

Exhibit No. 20: Affidavit of Publication dated November 13, 2008

JNOC:gao
L08TY401 RPT